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FILED

AUG 18 2008

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name SEEGARS JAMES  
(Last) (First)

Prisoner Number E - 16635

Institutional Address AVENAL STATE PRISON - 1 KINGS WAY - P.O. BOX 9  
AVENAL, CALIFORNIA 93204

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CW

CV 08

3940

JAMES SEEGARS

Full Name of Petitioner

Case No. (To be provided by the clerk of court)

E-filing

vs.

(PR)

JAMES D. HARTLEY, WARDEN

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent  
(Warden or jailor)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

CV 08-3940-CW

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SANTA CLARA SUPERIOR COURT

Court

191 NORTH FIRST STREET

Location SAN JOSE, CA. 95113-1090

(b) Case number, if known 121948

(c) Date and terms of sentence 4/5/89

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where? AVENAL STATE PRISON - 1 KINGS WAY - P.O. BOX 9 - AVENAL, CA. 93204  
(Name of Institution) (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

288(a)(c), 289(a) and 211/212

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐ Preliminary Hearing: Yes ☒ No ☐ Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty \_\_\_\_\_ Not Guilty **X** Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury **X** Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

6. Did you testify at your trial? Yes    No   

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes **X** No     
 (b) Preliminary hearing Yes **X** No     
 (c) Time of plea Yes **X** No     
 (d) Trial Yes **X** No     
 (e) Sentencing Yes **X** No     
 (f) Appeal Yes    No **X**  
 (g) Other post-conviction proceeding Yes    No **X**

8. Did you appeal your conviction? Yes    No **X**

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes    No    **N/A** \_\_\_\_\_  
 (Year) (Result)

Supreme Court of California Yes    No    **N/A** \_\_\_\_\_  
 (Year) (Result)

Any other court Yes    No    **N/A** \_\_\_\_\_  
 (Year) (Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? **N/A** Yes    No   

(c) Was there an opinion? **N/A** Yes    No   

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
 Yes    No **X**

If you did, give the name of the court and the result:

---

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No   

SUPERIOR COURT SANTA CLARA - WRIT OF HABEAS CORPUS - denied(see attached Exhibits C thru D).

CALIFORNIA SUPREME COURT - WRIT OF HABEAS CORPUS - DENIED(see EXHIBITS C THUR D).

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA -  
28 U.S.C § 2254 - DENIED WITHOUT PREJUDICE(SEE EXHIBITS A THRU B HEREIN COLLECTIVELY.)

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court SUPERIOR COURT SANTA CLARA

Type of Proceeding CUNNINGHAM(i.e.,upper term )and ineffective assistance of counsel for failure to file appeal(evidentiary hearing)(EXHIBIT C-D)

Grounds raised (Be brief but specific):

a. TRIAL COURT ERRED WHEN IMPOSING UPPER TERM

b. INEFFECTIVE ASSISTANCE OF COUNSEL

c. \_\_\_\_\_

d. \_\_\_\_\_

Result DENIED Date of Result 10-24-2003

II. Name of Court CALIFORNIA SUPREME COURT

Type of Proceeding HABEAS CORPUS

Grounds raised (Be brief but specific):

a. TRIAL COURT ERRED WHEN IMPOSING UPPER TERM

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result DENIED Date of Result 5-9-07

III. Name of Court \_\_\_\_\_

Type of Proceeding \_\_\_\_\_

Grounds raised (Be brief but specific):

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result \_\_\_\_\_ Date of Result \_\_\_\_\_

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ☐ No ☐

\_\_\_\_\_  
(Name and location of court)

#### B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: SEE ATTACHED

Supporting Facts: \_\_\_\_\_

Claim Two: **SEE ATTACHED**

Supporting Facts: \_\_\_\_\_

Claim Three: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

N/A



JAMES SEE GARS - E16635

630 - 1 - 29L

P.O.BOX 9

Avenal, Ca. 93204

PETITIONER AND APPELLANT

IN PRO PER

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES SEE GARS,

PETITIONER,

v.

JAMES D. HARTLEY,

RESPONDENT,

CASE NO.: \_\_\_\_\_

INTRODUCTION

NOW COMES PETITIONER(JAMES SEE GARS)BEFORE THE HONORABLE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:

On July 13, 2007, the Honorable United States District Judge Martin J.Jenkins "DISMISSED " petitioner's habeas petition 28 U.S.C.§ 2254 without prejudice, with direction to re-file once all state post-conviction challenges were completed,case number C-07-3139 MJJ(PR).(See Exhibit A herein collectively.)

Petitioner respectfully comes before this Court in light of his previous issue raising the Cunningham v California,549 U.S.\_\_\_\_,127 S.Ct.856, decision rendered by the United States Supreme Court on January 22. 2007.

1 Petitioner's sentence is legally unauthorized and violated his Sixth and Fourteenth  
2 Amendments.

3  
4 GOOD CAUSE JUSTIFICATION AND EXPLANATION FOR RELIEF

5 On January 22, 2007, the United states Supreme court decided Cunningham v California,  
6 127 S.Ct.856, which held that, " California Determinate Sentencing Law (DSL) is uncon-  
7 stitutional and violated defendant's Sixth and fourteenth Amendments.

8 On October 24, 2003, petitioner's conviction became final, case no.#121948(Exhibit  
9 D herein collectively.)

10 On Febuary 5, 2007, petitioner filed a writ of habeas corpus in the Santa Clara  
11 Superior Court, case no.#121948.(Exhibit C)

12 On April 5, 2007, petitioner filed a writ of habeas corpus in the California Supreme  
13 Court, case no.# S151564.(Exhibit B.)

14 On June 14, 2007, petitioner filed a 28 U.S.C § 2254 in this United States District  
15 Court.(Exhibit A herein collectively.)

16 On August 17, 2007, petitioner filed a " NOtice of Appeal" in this District Court  
17 out of ignorance of the law when the Honorable Judge Martin J.Jenkins dismissed his  
18 petition without prejudice because petitioner did not understand the order.(Exhibit  
19 A herein collectively.)

20 On October 22, 2007, petitioner's filed a Certificate of Appealability, denied on  
21 November 8, 2007.(Exhibit A herein collectively.)  
22  
23  
24  
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28

RELEVANT FACTUAL PROCEDURAL HISTORY

The California Legislature quickly swung into action and passed a new bill which eliminated California preference for the middle -term, by returning to the trial judge power to impose an upper -term sentence on their own, consistently with the Sixth Amendment concerns the Supreme Court had expressed in Cunningham.

Governor Schwarnegger quickly signed the bill in to law in late March, so the middle-term is no longer the " statutory minimum ", that the judge can impose without supporting jury findings."

As of April 30, 2007, the Cunningham window closed preventing the ability of prisoners to claim the upper-term sentence violated their Sixth Amendment.

However, petitioner filed his habeas petition before the new " anti-Cunningham " legislation took effect.(See Exhibit B thru C herein collectively.)

In other words, the result of Cunningham is a direct result of the rule announced in Apprendi v New Jersey, 530 U.S.466(2000), thus retroactivity is not a factor because Cunningham is not a new ruling, and petitioner is entitled to present his claim on habeas corpus.(See Backting v Bayer, 399 F.3d 1010,1023(9th Cir.)("Crawford simply reiterates a long standing rule and does not announce a new rule, the retroactivity falls out of our analysis."Id.at 1023.)

Accordingly, petitioner is entitled to relief based on the fact his case did not become final until after Apprendi, therefore, this court should grant relief based on the trial court's erroneous imposition of the upper-terms on counts 2, 4, 5, 6, 8, 9, and 11, which violated petitioner's Sixth and Fourteenth Amendments of the Due Process Clause.(See McClesky v Zant, 499 U.S.467, 111 S.Ct.1454, 1456; Stone v Powell, 428 U.S.465, 492-493.)

1 GROUND ONE:

2 THE TRIAL COURT ERRED UNDER CUNNINGHAM'S DECISION BY IMPOSING THE UPPER TERMS BASED  
3 ON FACTS NOT FOUND BY THE JURY VIOLATED PETITIONER'S SIXTH AND FOURTEENTH AMENDMENTS  
4 OF THE DUE PROCESS CLAUSE:

5 SUPPORTING FACTS:

6 On April 5, 1989, petitioner was convicted by jury of six counts of oral copula-  
7 tion(P.C. § 288(a)(c).), and one count of penetration w/foreign object(P.C. § 289(a).)  
8 and one count of second-degree-robbery(P.C. § 211/212(b).), one count of attempted  
9 rape(P.C. § 664/261(2).), one count of false imprisonment(P.C. § 236/237, case no.  
10 121948.(See Exhibits E - F herein collectively.)

11 On May 3, 1989, the trial court imposed the upper-term on counts 2,4,5,6,8,9,and  
12 11, plus enhancements totaling a term of 54 years to be served in the dept.of Cor-  
13 rections Rehabilitation.(Exhibit E.)

14 The trial court erred when imposing the upper-terms without the jury's finding and  
15 without petitioner's admission to the additional factors.(See Exhibits E- F.)

16 Accordingly, the trial court abused its discretion violating petitioner's constitu-  
17 tional rights guaranteed under the Sixth and Fourteenth Amendments of the United  
18 States Constitutions and California Constitutions, which is a fundamental miscarri-  
19 age of justice of the Due Process Clause.

Memorandum of Points And Authorities

ARGUEMENT

A

Under California Determinate sentencing Law(DSL), offenses are punishable by one of three precise terms of imprisonments; a low term, a mid-term, and a upper-term.

Petitioner's finality of his conviction became final on 10-24-03, after Apprendi. The United States Supreme Court's decision held that; " imposition of an upper term sentence under California's former Determinate Sentenceing Law based on neither a prior conviction, nor facts found by the jury or admitted by the defendant violates the sixth and fourteenth Amendments.

The federal constitution jury-trial gurantee proscribes a sentencing scheme that allows a judge to impose a sentence above the " statutory maximum " based on facts other than a prior conviction, not found by a jury or admitted by the defendant.(See Apprendi, supra, 530 U.S.466, Ring v Arizona, 536 U.S.584(2003); Blakely v Washington, 542 U.S.296; United States v Booker, 543 U.S.220(2005)("the relevant "statutory maximum " is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.")see Cunningham, supra, 127 S.Ct.at 860.)

None of the aggravating factors on which the trial court relied on is a constitutionally permissible ground for exceeding the statutory maximum at the time of the imposition in petitioner's case.(Exhibit E.)

Cunningham opine, that the genesis for its decision is the rule announced for the first time in Apprendi. The Supreme court re-affirmed the Apprendi rule, and summarizing Blakely. The Court stated; " it was applying the appendi rule.

Apprendi makes it perfectly clear that the " statutory maximum " sentence a judge may impose solely is on the basis of the facts reflected in the jury's verdict or admitted by the defendant, not the maxi-

1 mum sentence the judge may impose after finding additional facts, but the maximum  
2 he may impose without any additional findings."(Id.at 490.)

3 The Cunningham court concluded that, " our decision from Apprendi to Booker, points  
4 to the middle term specified in California's statutes, not the upper-term as  
5 the "statutory maximum."(Blakely, 542 U.S. at 303-304.) 1/

6 In petitioner's case, the trial court's imposition of the high-end(upper term)  
7 sentence was based on facts found by the judge, which exceeded the " statutory maxi-  
8 mum ", because the mid-term is the most that can be imposed under California's statutes  
9 without special findings by the jury or admitted by the defendant.(Blakely, 542 U.S.  
10 at 303-304; citing Apprendi, supra, 530 U.S.466.)

11 Clearly the fact finding in petitioner's case elevated his sentence from the  
12 "statutory maximum"...falls within the province of the jury employing a beyond a  
13 reasonable doubt standard, not the bailwick of the trial judge's determination where  
14 the preponderance of evidence lies.(See People v Diaz(2007) Cal.App.4th ).

15 Furthermore, Cunningham relies on Blakely, Blakely applies the rules announced in  
16 Apprendi, therefore, entitling petitioner to relief based on his conviction becoming  
17 finalized after Apprendi, which violated his Sixth and Fourteenth Amendments.(See  
18 Exhibit D.; see also People v Rosen(2007) Cal.App.4th(WL900765); §VII[Apprendi  
19 dictated the result in Cunningham]; Reed v Schriro, F.Supp.2d , (2007WL521016(D.  
20 Ariz.2/14/07)(key "Finality" date for successfully making Cunningham claims is the  
21 date that Apprendi came down.)

22 Moreover, a factor in aggravation must have the effects of making a crime "dis-  
23 tinctively worse than the ordinary "(People v Webber(1991)228 Cal.App.3d 1146,1169,  
24 1/" Any fact extending the defendant's sentence beyond the maximum authorized by the  
25 jury or admitted by the defendant would have been considered an element of a  
26 aggravated crime and thus the domain of the jury by those who framed the BILL OF  
27 RIGHTS."

1 and a fact that is an element of a crime or that is essential to a jury's determina-  
2 tion of guilt may not be used to impose the upper-term"(See Cunningham,127 S.Ct.at  
3 868; see also Cal.Rules of Court,Rule 4.420(d).)

4  
5  
6 B

7 TRIAL COURT'S ERROR AND ABUSE OF DISCRETION REQUIRES REVERSAL:

8 Failure to submit a sentencing factor to the jury is subject to harmless error  
9 analysis under the standard set forth in Chapman v California,386 U.S.18(1967); see  
10 Washington v Recuenco, 548 U.S.\_\_\_\_,126 S.Ct.2546, 2551-2553.)

11 However, Apprendi error is evaluated under the Chapman standard.(See People v Sena-  
12 padychith(2001)26 Cal.4th 316, 327.)

13 Consequently, while a jury reasonably could have found each of the aggravating  
14 factors to be true beyond a reasonable doubt based on the evidence presented in the  
15 trial court, this court cannot conclude that a jury would have done so.

16 Thus, this court should not conclude that the constitutional error sustained by  
17 petitioner was harmless beyond a reasonable doubt because it violated his Sixth and  
18 Fourteenth Amendments.

SUMMARY

Consequently, because a fact other than a prior conviction used to impose the upper-term must first be submitted to a jury and proved beyond a reasonable doubt, unless the accused waives the right to jury trial (Cunningham, 549 U.S. \_\_\_, 127 S.Ct. 856 [166 L.Ed.2d at 873], it now appears that to satisfy procedural due process, an aggravating fact must be charged in the accusatory pleading. (See Apprendi, 530 U.S. 466, 476, 494, fn.19 [147 L.Ed.2d 435, 446, 457, fn.19]; Jones v United States, 526 U.S. 227, 243, fn.6 [143 L.Ed.2d 311, 326, fn.6] ["any fact (other than prior convictions) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and prove[d] beyond a reasonable doubt" (italics added)].) (Barragan v Superior Court (2007) \_\_\_ Cal. App.4th \_\_\_ (WL914768, \*2) [permitting, in a just-begun criminal trial, the amendment of the information to allege aggravating factors.]) (See Exhibits A - B herein collectively.)



## CONCLUSION

Wherefore, petitioner prays that the judgement be modified to impose the " middle-term " on counts 2,4,5,6,8,9,11, and order the clerk of the Superior Court to prepare a new abstract of judgement reflecting imposition of the middle-terms on all counts above, that the abstract of judgement reflect that the sentence on all counts listed above as mid-terms are full terms to be served consecutively, not consecutive sentences of 1/3 of the middle-term as they were previously and incorrectly designated, and forward a true copy to the California Department of Corections Rehabilitation.

Respectfully submitted

*James Seegars*  
 JAMES SEEGARS  
 PETITIONER AND APPELLANT  
 IN PRO PER

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List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

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Do you have an attorney for this petition? Yes ☒ No ☐

If you do, give the name and address of your attorney:

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WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2008  
Date

Charles Degeers  
Signature of Petitioner

PROOF OF SERVICE BY MAIL

**ORIGINAL**

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE. THAT I CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

ENTITLED: WRIT OF HABEAS CORPUS § 28 U.S.C. § 2254 and EXHIBITS

BY PLACING THE SAME IN AN ENVELOPE, SEALING IT BEFORE A CORRECTIONAL OFFICER, AND DEPOSITING IT IN THE [UNITED STATE MAIL] AT AVENAL STATE PRISON AND ADDRESSED IT TO THE FOLLOWING:

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CA. 94102

ATTORNEY GENERAL OFFICE  
JERRY BROWN, et.al.  
455 GOLDEN GATE AVENUE, STE. 1100  
SAAN FRANCISCO, CA. 94102-3364

EXECUTED ON July 30, 20 08 AT AVENAL STATE PRISON, AVENAL, CALIFORNIA

I, JAMES SEEGARS, DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

James Seegars

SIGNATURE OF DECLARANT

JAMES SEEGARS

PRINT NAME OF DECLARANT

PRO PER.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES SEEGARS,

Petitioner,

v.

SUZAN HUBBARD,

Respondent.

No. C 07-3139 MJJ (PR)

**ORDER OF DISMISSAL**

Petitioner, a California prisoner, filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging a 1989 conviction and sentence from Santa Clara County Superior Court. Petitioner states that a “petition, appeal or other post-conviction proceeding” is “now pending” in the California Supreme Court. See Petition at 5.

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c); Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a criminal conviction is pending in state court, a potential federal habeas petitioner must await the outcome of the challenge before his state remedies are considered exhausted. See id. Moreover, the rule in Sherwood applies whether or not the issue raised in the pending state petition is included in the federal petition because a pending state court challenge may result in the reversal of the petitioner's conviction, thereby mootng the federal petition. See id. (citations omitted).

As petitioner has a post-conviction proceeding pending in the California Supreme Court, the instant petition for a writ of habeas corpus is DISMISSED without prejudice to refiling once all state court post-conviction challenges to petitioner's conviction and sentence

1 have been completed, and all claims petitioner wishes to raise in federal court have been  
2 presented to the California Supreme Court. See 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455  
3 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be  
4 exhausted).

5 The Clerk shall close the file and terminate any pending motions.

6 IT IS SO ORDERED.

7 DATED: 7/31/2007

8   
MARTIN J. JENKINS  
9 United States District Judge  
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United States District Court  
For the Northern District of California

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES SEEGARS,

Plaintiff,

v.

SUZAN HUBBARD et al,

Defendant.

---

Case Number: CV07-03139 MJJ

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 31, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Seegars  
Prisoner Id E-16635  
P.O. Box 2500  
Vacaville, CA 95696-2500



Dated: July 31, 2007

Richard W. Wieking, Clerk  
By: Edward Butler, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES SEEGARS,

Petitioner,

v.

SUZAN HUBBARD,

Respondent.

No. C 07-3139 MJJ (PR)

**ORDER OF DENYING  
CERTIFICATE OF  
APPEALABILITY**


(Docket No. 7)

Petitioner, a California state prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was dismissed, and petitioner has filed a notice of appeal and a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b). See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). Petitioner has not shown "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, the request for a certificate of appealability is DENIED. The Clerk shall forward this order, along with the case file, to the United States Court of Appeals for the Ninth Circuit, from which petitioner also may seek a certificate of appealability. See Asrar, 116 F.3d at 1270.

This order terminates Docket No. 7.

IT IS SO ORDERED.

DATED: 11/7/2007

  
MARTIN J. JENKINS  
United States District Judge





UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JAMES SEEGARS,  
Plaintiff,

Case Number: CV07-03139 MJJ

**CERTIFICATE OF SERVICE**

v.

SUZAN HUBBARD et al,  
Defendant.


---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 8, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Seegars  
Prisoner Id E-16635  
P.O. Box 2500  
Vacaville, CA 95696-2500

Dated: November 8, 2007

  
Richard W. Wieking, Clerk  
By: R.B. Espinosa, Deputy Clerk

APPEAL, CLOSED, E-Filing, HABEAS, ProSe

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:07-cv-03139-MJJ  
Internal Use Only**

Seegars v. Hubbard  
Assigned to: Hon. Martin J. Jenkins  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/14/2007  
Date Terminated: 07/31/2007  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner****James Seegars**

represented by **James Seegars**  
Prisoner Id E-16635  
P.O. Box 2500  
Vacaville, CA 95696-2500  
PRO SE

V.

**Respondent**

**Suzan Hubbard**  
*Warden*

Date Filed	#	Docket Text
06/14/2007	1	PETITION for Writ of Habeas Corpus; no process (Filing fee: IFPP). Filed by James Seegars. (slh, COURT STAFF) (Filed on 6/14/2007) (Entered: 06/15/2007)
06/14/2007	2	CLERK'S NOTICE re completion of In Forma Pauperis affidavit or payment of filing fee due within 30 days. (slh, COURT STAFF) (Filed on 6/14/2007) (Entered: 06/15/2007)
06/14/2007		CASE DESIGNATED for Electronic Filing. (slh, COURT STAFF) (Filed on 6/14/2007) (Entered: 06/15/2007)
06/22/2007		Receipt of \$5.00 for filing fee. #34611007620 (gsa, COURT STAFF) (Filed on 6/22/2007) (Entered: 06/29/2007)
07/31/2007	3	ORDER DISMISSING CASE - Petition for a writ of habeas corpus is DISMISSED without prejudice to refiling once all state court post-conviction challenges to petitioner's conviction and sentence have been completed. Signed by Judge Martin J. Jenkins on 7/31/07. (Attachments: # 1 Certificate of Service)(epb, COURT STAFF) (Filed on 7/31/2007)

		(Entered: 07/31/2007)
08/17/2007	4	NOTICE OF OBJECTION to 3 Order Dismissing Case by James Seegars. (slh, COURT STAFF) (Filed on 8/17/2007) (Entered: 08/23/2007)
09/12/2007	5	ORDER DENYING MOTION OBJECTING TO DISMISSAL. Signed by Judge Martin J. Jenkins on 9/12/07. (Attachments: # 1 Certificate of Service)(aaa, Court Staff) (Filed on 9/12/2007) (Entered: 09/12/2007)
10/22/2007	6	NOTICE OF APPEAL as to 5 Order by James Seegars. Filing fee not paid. (slh, COURT STAFF) (Filed on 10/22/2007) (Entered: 10/24/2007)
10/22/2007	7	MOTION for Certificate of Appealability filed by James Seegars. (slh, COURT STAFF) (Filed on 10/22/2007) (Entered: 10/24/2007)
11/08/2007	8	ORDER by Judge Martin J. Jenkins denying [7] Motion for Certificate of Appealability. (Attachments: # 1 Certificate of Service) (rbe, COURT STAFF) (Filed on 11/8/2007) (Entered: 11/08/2007)
11/08/2007		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re [6] Notice of Appeal. (slh, COURT STAFF) (Filed on 11/8/2007) (Entered: 11/14/2007)
11/08/2007		Copy of Notice of Appeal and Docket sheet mailed to all counsel. (slh, COURT STAFF) (Filed on 11/8/07) (Entered: 11/14/2007)
11/08/2007		Certificate of Record Mailed to USCA re appeal [6] Notice of Appeal. (slh, COURT STAFF) (Filed on 11/8/07) (Entered: 11/14/2007)
11/08/2007		Mailed request for payment of docket fee to appellant (cc to USCA) (slh, COURT STAFF) (Filed on 11/8/07) (Entered: 11/14/2007)
11/08/2007		Record on Appeal Certified and Transmitted to US Court of Appeals re [6] Notice of Appeal. (slh, COURT STAFF) (Filed on 11/8/07) (Entered: 11/14/2007)

EXHIBIT B

S151564

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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---

In re JAMES SEEGARS on Habeas Corpus

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The petition for writ of habeas corpus is denied.

SUPREME COURT  
**FILED**

MAY - 9 2007

Frederick K. Ohlrich Clerk

---

DEPUTY

**GEORGE**

---

Chief Justice

EXHIBIT C

**FILED**

MAR 01 2007

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

KIRI TORRE  
Chief Executive Officer  
Superior Court of CA County of Santa Clara  
BY *[Signature]* DEPUTY

In re

JAMES SEEGARS,

On Habeas Corpus

No.: 121948

ORDER

Mr. SEEGARS, (hereinafter Petitioner,) has filed a habeas corpus petition in which he seeks relief based on the United States Supreme Court's holding, in *Cunningham v. California* (2007) 75 U.S.L.W. 4078, that *Blakely v. Washington* (2004) 542 U.S. 296 applies to California's sentencing practices. However Petitioner's case was final prior to June 24, 2004, (the date *Blakely* was decided) and the *Blakely* rule is not retroactive. (See *In re Consiglio* (2005) 128 Cal.App.4th 511, *People v. Amons* (2005) 125 Cal.App.4th 855, 864-865, and *Schardt v. Payne* (2005, 9th Circuit) 414 F.3d 1025.) Accordingly, all requested relief or action is denied.

DATED: March 1, 2007

*[Signature: Linda R. Condrón]*  
LINDA R. CONDRON  
JUDGE OF THE SUPERIOR COURT



cc: Petitioner  
District Attorney  
Research (2-16A)  
CJIC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA )

Plaintiff, )

CASE NO: 121948

VS. )

James Seegars, )

Petitioner. )

PROOF OF SERVICE BY MAIL OF: ORDER

CLERKS CERTIFICATE OF MAILING;

I CERTIFY THAT I AM NOT A PARTY TO THIS CAUSE AND THAT A TRUE COPY OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE PREPAID IN A SEALED ENVELOPE ADDRESSED AS SHOWN BELOW AND THE DOCUMENT WAS MAILED AT SAN JOSE, CALIFORNIA ON March 1, 2007

Dated: March 1, 2007

KIRRI TORRE  
County Clerk

By: 

Lydia Gonzalez

James Seegars CDC # E-16635  
P.O. Box 2500  
Vacaville, CA 95696-2500  
Y1030

District Attorney  
70 West Hedding Street  
San Jose, Ca 95110  
(placed in inter-office box)

Research Attorney's/Hall of Justice  
190 W. Hedding Street  
San Jose, CA 95110  
(placed in inter-office box)

CJIC/Hall of Justice  
190 W. Hedding Street  
San Jose, CA 95110  
(placed in inter-office box)



**EXHIBIT D**

(ENDORSED)  
**FILED**  
 OCT 24 2008  
 KIRI TORPE  
 Chief Executive Officer/Clerk  
 Superior Court of CA County of Santa Clara  
**JOSE OLIVAREZ** DEPUTY

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

In re	)	No. 121948
	)	
<b>JAMES SEEGARS,</b>	)	<b>AMENDED FINAL ORDER</b>
	)	
On Habeas Corpus	)	
_____	)	

JAMES SEEGARS (hereinafter "Petitioner") submitted to this court a petition for a writ of habeas corpus in which he asserted he was denied his right to appeal. This Court issued an order to show cause to explore the issues that Petitioner raised. The District Attorney filed a response, and Petitioner filed a traverse. This Court ordered an evidentiary hearing to explore the issues that Petitioner raised. Following the hearing, Petitioner's counsel and the District Attorney were ordered to conduct further briefing. The District Attorney has filed her further briefing, and Petitioner's counsel has filed further responsive briefing.

After careful consideration of the briefings of the parties and the evidence presented at the evidentiary hearing, this Court determines that Petitioner has not met his "burden of alleging and proving by a

1 preponderance of the evidence all of the facts" necessary to resolve the  
2 evidentiary disputes that this case presented. (In re Merkle (1960) 182  
3 Cal.App.2d 46, 48.)  
4

5 In his original petition, Mr. Seegars stated a *prima facie* case  
6 that between 1989 and 2000, he was incapacitated and unaware his  
7 attorney did not file a notice of appeal, that his attorney stated she  
8 would file a notice of appeal on his behalf, and but for her misconduct,  
9 he would have filed a notice of appeal himself.  
10

11 The two primary factual disputes presented by the petition was  
12 whether Petitioner could adequately justify his delay in seeking relief  
13 through habeas corpus due to medical infirmities and whether he asked  
14 his trial attorney to file a notice of appeal on his behalf.

15 **I. STATEMENT OF FACTS**

16 Based on the evidence presented by Petitioner and Respondent in  
17 their filings and at the evidentiary hearing, this Court makes the  
18 following findings of fact.

19 *Petitioner's Medical History*

20 On May 10, 1989, Petitioner was received at San Quentin following  
21 his sentencing on May 3, 1989. According to the information checklist  
22 completed at the time of admission, Petitioner's mental status was  
23 checked as normal with no psychiatric consult indicated.  
24

25 On June 8, 1989 Petitioner was admitted to the hospital at San  
26 Quentin for psychiatric observation. The following information is  
27 contained in Petitioner's Exhibit D: Petitioner was admitted "In a  
28 decompensated psychotic state resembling a toxic delirium. For the

1 preceding month he had been fearful and talking to others unseen by his  
2 cell mate and was very fearful that they were trying to harm him."  
3 Petitioner was seen by a psychiatrist who prescribed Haldol on this same  
4 date. By June 14, 1989, Petitioner's symptoms had cleared. The psychosis  
5 was considered to be in remission and he was discharged from the  
6 hospital with no psychotic symptoms. Petitioner was given a new  
7 diagnosis of "Acute Situational Adjustment."

8 According to medical records, Petitioner said he began to  
9 deteriorate when he received his sentence of 54 years. He stated that  
10 within 3 weeks of his sentencing, he began to hear voices. The medical  
11 records contain a statement by Petitioner that he told the screening  
12 doctor upon his admission to San Quentin he wished to see a  
13 psychiatrist, and his request was ignored.  
14

15 On June 30, 1989, Dr. Morentz observed no psychiatric signs or  
16 symptoms. His diagnosis was Organic Psychosis Secondary to Street Drug  
17 Use which was in remission with medication. He recommended Petitioner  
18 be rejected for psychiatric treatment and be returned to the general  
19 population.

20 On July 20, 1989 and August 8, 1989, Petitioner again presented  
21 himself for psychiatric treatment and was rejected. Dr. Brichta  
22 indicated that she believed Petitioner may be faking.

23 August 30, 1989 Petitioner cut his arm "to let the raccoons out."  
24 Petitioner admitted he was not troubled and cut himself to be readmitted  
25 to CMF. The treating physician gave him a diagnosis of "Probable  
26 Adjustment Reaction."  
27

28 Petitioner again presented himself for psychiatric treatment on

1 August 30, 1989. He complained of visual and auditory hallucinations.

2 Dr. Shelley James, staff psychiatrist at the State of California  
3 Department of Corrections Medical Facility at Vacaville, testified at  
4 the evidentiary hearing. Dr. James began treating Petitioner in 1993  
5 (the date is not precise) and continued to treat him into 2000. Dr.  
6 James did not treat Petitioner when Petitioner first arrived at CMF,  
7 Vacaville. Dr. James' diagnosis of Petitioner has always been the same:  
8 ADHD, polysubstance abuse, and borderline intellectual functioning. Dr.  
9 James testified that borderline intellectual functioning is not subject  
10 to change, and, in Petitioner's case, it has not changed.  
11

12 Dr. James took Petitioner off the psychiatric medications. Through  
13 2000, Petitioner remained off of these medications while residing at  
14 CMF. Dr. James testified Petitioner was never psychotic while under his  
15 care. He also stated if Petitioner exhibited psychotic symptoms on June  
16 14, 1989, those same symptoms should have been apparent on May 3, 1989,  
17 the day of sentencing. Ms. Trevino also testified there were no such  
18 symptoms.

19 From 1993 to 2000, Petitioner has remained off psychiatric  
20 medications. During this time, his diagnoses included ADHD,  
21 Polysubstance Abuse, Antisocial Personality Disorder, mildly retarded,  
22 borderline intellectual functioning, clear and rational, but slow in  
23 processing information, and impaired cognitive ability.  
24

25 When shown samples of Petitioner's written communication with Ms.  
26 Trevino during his trial in 1989, Dr. James testified that, based on his  
27 experience with Petitioner, he would not have expected him to  
28 communicate on that level.

1        There was no evidence of a psychiatric disorder at the time of  
2 trial and sentencing. Ms. Trevino testified she saw no evidence of a  
3 mental disorder and did not believe there were any grounds for a  
4 psychiatric evaluation. She never believed Petitioner was mentally  
5 disabled, and none of her colleagues in the Public Defender's office,  
6 who represented him before her, made mention of or noted in their office  
7 file that Petitioner had any mental disorder issues. According to  
8 Petitioner, his symptoms began after sentencing.

9  
10 *Petitioner's Communications with Trial Counsel Regarding His Notice of Appeal*

11        At the time of sentencing, Ms. Trevino spoke to Petitioner and  
12 explained his appellate rights to him and she even reminded the  
13 sentencing judge to advise of his appellate rights. After sentencing,  
14 Ms. Trevino specifically asked Petitioner if he wanted her to file an  
15 appeal on his behalf, and Petitioner told her clearly and emphatically  
16 that he did not want her to do so. She never received any further  
17 communication from him. Ms. Trevino testified she believed Petitioner  
18 understood his right to an appeal, he understood she was willing to file  
19 the notice of appeal, and he could request that she file one. She  
20 stated it would have been her practice to file the notice on the date of  
21 sentencing.  
22

23        Ms. Trevino also testified she saw no arguably meritorious grounds  
24 for appeal. While Ms. Trevino could not recall this herself, Petitioner  
25 testified that she did tell him that she believed that there were no  
26 grounds to raise on appeal. However, Ms. Trevino did not remember  
27 advising Petitioner to seek the advice of other counsel regarding her  
28

1 competency at trial.

2 **II. PETITIONER HAS FAILED TO JUSTIFY HIS DELAY IN SEEKING HABEAS RELIEF.**

3 Denial of the right to effective assistance of counsel is one trial  
4 error which is cognizable on collateral review whether or not it was  
5 raised on appeal. (People v. Jackson (1973) 10 Cal.3d 265, 268, *citing*  
6 In re Hochberg (1970) 2 Cal.3d 870, 875.) However, any significant  
7 delay in seeking collateral relief on this ground must be fully  
8 justified. (Jackson, *supra*, 10 Cal.3d at 268, *citing* In re Wells (1967)  
9 67 Cal.2d 873, 875.)

10  
11 "It has long been required that a petitioner explain and justify  
12 any significant delay in seeking habeas corpus relief. 'It is the  
13 practice of this court to require that one who belatedly presents a  
14 collateral attack such as this explain the delay in raising the  
15 question.'" (In re Clark (1993) 5 Cal.4th 750, 765, *quoting* In re Swain  
16 (1949) 34 Cal.2d 300, 302.) "The burden is one placed even on indigent  
17 petitioners appearing in propria persona. . . ." (In re Clark, *supra*, 5  
18 Cal.4th at 765.) A petition should be filed as promptly as the  
19 circumstances allow, and the petitioner "must point to particular  
20 circumstances sufficient to justify substantial delay." (In re  
21 Stankewitz (1985) 40 Cal.3d 391, 397, fn.1.)

22  
23 Despite Petitioner's claim in his original petition that he  
24 suffered a serious psychiatric illness, was being treated with heavy  
25 medication, and was unable to pursue his appeal between 1989 and 1994,  
26 the evidence at the hearing only indicated that Petitioner, at worst,  
27 suffered a psychiatric episode once in the month immediately following  
28 his sentencing in May 1989.

1 The period subsequent to the 1989 psychiatric episode revealed only  
2 a pattern of lies Petitioner made to secure certain placements at CDC.  
3 In fact, at the evidentiary hearing, Petitioner admitted that he lied to  
4 secure such placements. He lied to be admitted to CMF and lied to remain  
5 there. His lies resulted in some of the diagnoses he received.  
6 Moreover, even if Petitioner did become psychotic after sentencing, it  
7 was not apparent upon his admission to San Quentin. His psychosis  
8 cleared within 10 days, and it is questionable whether Petitioner ever  
9 suffered another psychotic episode. Petitioner admitted himself that he  
10 manufactured the psychotic episode involving raccoons in order to be  
11 readmitted to CMF. As stated before, Dr. James testified Petitioner was  
12 never psychotic while under his care.  
13

14 Dr. Diana Sullivan Eversteine, a licensed psychologist testified on  
15 behalf of the Respondent. She observed Petitioner during his testimony.  
16 It was her opinion Petitioner can analyze, think in the abstract, and  
17 has intelligence. It was also her opinion Petitioner lies to achieve  
18 his goals.

19 Petitioner's admission and confinement at the medical facility with  
20 psychiatric treatment and medication were of his own choosing. It was  
21 his desire to be removed from the general prison population because he  
22 was not comfortable in it. He felt more secure at CMF. The psychotic,  
23 borderline intellectually functioning individual presented to prison  
24 officials is not the same person who presented himself to Ms. Trevino  
25 and the attorneys who preceded her.  
26

27 As a result, the evidence overwhelmingly indicates that Petitioner  
28 was not so mentally debilitated that he could not diligently pursue an



1 appeal. More importantly, Petitioner admitted to falsifying his symptoms  
2 to gain placement at CMF. Thus, by Petitioner's own admission, he was  
3 falsely claiming mental illness.

4 Petitioner has failed to adequately justify his delay in seeking  
5 relief.

6 **III. PETITIONER'S CLAIM THAT HE ASKED HIS TRIAL COUNSEL TO FILE A NOTICE**  
7 **OF APPEAL IS NOT CREDIBLE.**

8 Even assuming that Petitioner has justified his delay in seeking  
9 relief, he still has not met his burden of showing he communicated his  
10 desire to pursue an appeal with his trial attorney and that his trial  
11 attorney did not honor that request.

12 At the evidentiary hearing, Ms. Trevino clearly remembered that  
13 Petitioner told her, in no unclear terms, that he did not want her to  
14 file an appeal or work on the case any further. In contrast, the only  
15 evidence to the contrary was Petitioner's own testimony at the  
16 evidentiary hearing. His testimony, however, was not particularly  
17 credible.

18  
19 Petitioner admitted to lying repeatedly to secure placement at  
20 facilities of his preference. Dr. Eversteine opined that Petitioner lies  
21 to achieve his goals. Petitioner's credibility was seriously impaired by  
22 his own testimony.

23 As a result, Petitioner has failed to credibly discredit his trial  
24 attorney's claim that Petitioner never asked her to pursue an appeal.  
25 The evidence suggests that Petitioner's credibility, and not Ms.  
26 Trevino's credibility, is questionable. Moreover, Petitioner has failed  
27 to rebut Ms. Trevino's testimony that she believed that there were no  
28

1 arguably meritorious issues to be raised on appeal.

2 In addition, Petitioner argues that his right to appeal was  
3 thwarted by Ms. Trevino's failure to advise him to seek outside  
4 counsel's advice regarding her competency at trial. However, the mere  
5 failure to fully advise and consult is not *per se* constitutional error  
6 according to the U.S. Supreme Court:

7 "We cannot say, as a constitutional matter, that in every case  
8 counsel's failure to consult with the defendant about an  
9 appeal is necessarily unreasonable, and therefore deficient.  
10 Such a holding would be inconsistent with both our decision in  
11 Strickland and common sense. See 466 U.S. at 689 (rejecting  
12 mechanistic rules governing what counsel must do). For  
13 example, suppose that a defendant consults with counsel;  
14 counsel advises the defendant that a guilty plea probably will  
15 lead to a 2 year sentence; the defendant expresses  
16 satisfaction and pleads guilty; the court sentences the  
17 defendant to 2 years' imprisonment as expected and informs the  
18 defendant of his appeal rights; the defendant does not express  
19 any interest in appealing, and counsel concludes that there  
20 are no nonfrivolous grounds for appeal. Under these  
21 circumstances, it would be difficult to say that counsel is  
22 "professionally unreasonable," 466 U.S. at 691, as a  
23 constitutional matter, in not consulting with such a defendant  
24 regarding an appeal. Or, for example, suppose a sentencing  
25 court's instructions to a defendant about his appeal rights in  
26 a particular case are so clear and informative as to  
27 substitute for counsel's duty to consult. In some cases,  
28 counsel might then reasonably decide that he need not repeat  
that information. *We therefore reject a bright-line rule that  
counsel must always consult with the defendant regarding an  
appeal.*" (Roe v. Flores-Ortega (2000) 528 U.S. 470, 479,  
citing Strickland v. Washington (1984) 466 U.S. 668.)

22 In the absence of any showing of prejudice, the Court finds no  
23 misconduct by Ms. Trevino, and Petitioner's claim of ineffective  
24 assistance of counsel has no merit.

26 Accordingly, the petition is DENIED.

1  
2 DATED: 10/24

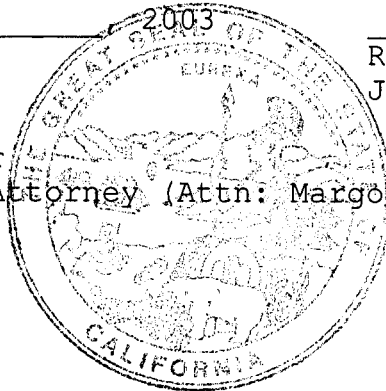
2003

RISE J. PICHON

RISE JONES PICHON

JUDGE OF THE SUPERIOR COURT

3  
4 cc: Petitioner  
5 District Attorney (Attn: Margo D. Smith)  
6 Research  
7 CJIC  
8  
9  
10  
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28



**EXHIBIT E**

COPY

FILED  
CARA JUL 13 1960

COUNTY OF SANTA CLARA JUL 12 1980

GRACE K. YAMAKAWA  
County Clerk  
Santa Clara County  
BY

— ८५ —

7-1-55

30 57

NO. 121948

THE PEOPLE OF THE STATE  
OF CALIFORNIA,  
  
PLAINTIFF,  
VS.  
  
JAMIE C. SEEGARS,  
  
DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JACK KOMAR  
JUDGE OF THE SUPERIOR COURT

MAY 3, 1989

SENTENCING

APPEARANCES:

FOR THE PLAINTIFF:

RICHARD TITUS  
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

YOLANDA TREVINO  
DEPUTY PUBLIC DEFENDER

00111

1 SAN JOSE, CALIFORNIA

MAY 3, 1989

2  
3 P R O C E E D I N G S

4  
5 THE COURT: ALL RIGHT. PEOPLE OF THE STATE  
6 OF CALIFORNIA VERSUS JAMES SEE GARS.

7 MS. TREVINO: MR. SEE GARS IS PRESENT  
8 REPRESENTED BY YOLANDA TREVINO.

9 MR. TITUS: RICHARD TITUS.

10 MS. TREVINO: MATTER IS SET FOR SENTENCING,  
11 YOUR HONOR. WE ARE PREPARED TO GO FORWARD.

12 THE COURT: ALL RIGHT. THIS IS THE TIME SET  
13 FOR SENTENCING IN THIS MATTER. READY TO PROCEED, BOTH  
14 SIDES?

15 MS. TREVINO: YES, YOUR HONOR.

16 MR. TITUS: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. DO YOU WAIVE FORMAL  
18 ARRAIGNMENT FOR JUDGMENT AND SENTENCING IN THIS CASE?

19 MS. TREVINO: SO WAIVED, YOUR HONOR.

20 THE COURT: DO YOU WAIVE THE FIVE-DAY RULE  
21 WITH REGARD TO RECEIPT OF THE PROBATION REPORT?

22 MS. TREVINO: YES, YOUR HONOR.

23 THE COURT: ANY LEGAL CAUSE WHY JUDGMENT AND  
24 SENTENCE SHOULD NOT NOW BE PRONOUNCED?

25 MS. TREVINO: THERE IS NONE.

26 THE COURT: ALL RIGHT. THE RECORD SHOULD  
27 REFLECT THAT THE COURT HAS VERY CAREFULLY READ AND  
28 CONSIDERED THE PROBATION REPORT. THERE ARE MANY FACTUAL

1 ERRORS SET FORTH IN THE SUMMARY OF THE OFFENSE.

2 TO THE EXTENT THAT THE REPORT COPIES THE  
3 POLICE REPORTS, AND THE EVIDENCE WAS SOMEWHAT DIFFERENT AS  
4 IT WAS PRESENTED IN OPEN COURT AND THE RECORD WILL SHOW I  
5 OF COURSE, HAVE HEARD THE EVIDENCE IN THIS CASE AND HEARD  
6 THE WITNESSES TESTIFY AND AM FAMILIAR WITH THE FACTS IN  
7 THIS CASE.

8 I HAVE CAREFULLY CONSIDERED THE  
9 RECOMMENDATION, THE STATEMENTS IN AGGRAVATION, AND  
10 MITIGATION THAT HAVE BEEN FILED BY THE PROBATION  
11 DEPARTMENT WITH REGARD TO THE MATTER.

12 I NOTE THERE ARE NO OTHER STATEMENTS IN  
13 MITIGATION OR AGGRAVATION THAT HAVE BEEN FILED.

14 MISS TREVINO, IS THERE ANYTHING FURTHER YOU  
15 WOULD LIKE TO STATE TO THE COURT AT THIS TIME?

16 MS. TREVINO: IF I MAY, YOUR HONOR, VERY  
17 BRIEFLY, AD I BELIEVE THAT MR. SEEGARS WOULD ALSO LIKE TO  
18 ADDRESS THE COURT FOLLOWING MYSELF.

19 YOUR HONOR, IN REVIEWING THE POLICE REPORT  
20 BOTH WITH THE COURT IN CHAMBERS AND WITH MY CLIENT I WOULD  
21 ASK THE COURT AT THIS TIME TO SENTENCE MY CLIENT TO A  
22 SENTENCE THAT IS A FAIR REFLECTION AS TO THE CHARGES  
23 BEFORE THE COURT.

24 AS THE COURT SPOKE AND SAID THAT THE COURT  
25 DID HEAR WHAT TRANSPIRED HERE DURING THE COURSE OF THE  
26 TRIAL.

27 AND THERE IS NUMEROUS CHARGES HERE BEFORE THE  
28 COURT.

1           THOSE CHARGES CAN AND DO ADD UP TO  
2           SUBSTANTIAL AMOUNT OF TIME.

3           AND THE QUESTION IS HOW MUCH OF THAT TIME  
4           SHOULD MR. SEEGARS BE SENTENCED TO AND HOW MUCH OF THAT  
5           TIME WOULD BE A FAIR TIME, BOTH AS THE LAW -- AS THE COURT  
6           KNOWS THE LAW, THE PUBLIC AND THAT TO MR. SEEGARS, THE  
7           DEFENDANT IN THIS CASE.

8           IN SPEAKING WITH MR. SEEGARS I ADVISED MR.  
9           SEEGARS AS TO THE MAXIMUM CONSEQUENCES TO THE CHARGES BOTH  
10          PRIOR TO THE TRIAL AND TODAY'S DATE PRIOR TO HIS  
11          SENTENCING SO HE'S QUITE AWARE AS TO THE NUMBER OF YEARS  
12          THAT THE COURT CAN, IN FACT, IMPOSE ON MR. SEEGARS.

13          IN VIEWING THE COUNTS AGAIN WITH HIM WE HAVE  
14          ARRIVED AT A RECOMMENDATION FOR THE COURT WHICH DIFFERS  
15          FROM THE RECOMMENDATION SET FORTH BY THE PROBATION REPORT.

16          IT WOULD BE OUR REQUEST THAT THE COURT  
17          SENTENCE MR. SEEGARS TO 40 YEARS. 40 YEARS, YOUR HONOR,  
18          IS QUITE A HEAVY SENTENCE AND IT TOOK A LOT OF TIME AND  
19          CONCENTRATION IN EVALUATION OF THIS CASE FOR ME TO ARRIVE  
20          AT SUCH A FIGURE.

21          I THINK THAT 40 YEARS REFLECTS A SUBSTANTIAL  
22          AMOUNT OF TIME FOR AN INDIVIDUAL TO BE INCARCERATED IN  
23          PRISON.

24          AND IT -- IT'S DIFFICULT FOR ME TO TELL THE  
25          JUDGE OR TO ASK THE JUDGE TO SENTENCE A PERSON AND TO LOCK  
26          HIM AWAY FOR 40 YEARS.

27          HOWEVER, THAT IS MY REQUEST.

28          IT WOULD BE MY REQUEST THAT THIS JUDGE



1 SENTENCE HIM ON COUNTS 4, 5, 6 AND 8 AS IS RECOMMENDED BY  
2 THE PROBATION REPORT WHICH INCLUDING THE FIVE YEAR STATE  
3 PRISON -- OR THE PROP 8 PRIOR WHICH WOULD AMOUNT TO 8 --  
4 EXCUSE ME -- WHICH WOULD AMOUNT TO 40 YEARS.

5 IT WOULD BE MY FURTHER REQUEST THAT THE  
6 ADDITIONAL COUNTS RUN CONCURRENT TO THAT 40 YEARS.

7 AND BASED ON THAT I WOULD SUBMIT THE MATTER,  
8 YOUR HONOR.

9 THE COURT: ALL RIGHT. BEFORE I HEAR FROM  
10 MR. SEEGARS, MR. TITUS.

11 MR. TITUS: I WILL SUBMIT THE MATTER ON MY  
12 COMMENTS IN CHAMBERS, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. SEEGARS, IS THERE ANYTHING YOU WOULD LIKE  
15 TO SAY TO THE COURT?

16 YOU CAN REMAIN SEATED.

17 THE DEFENDANT: SIR, YOUR HONOR, I HAD -- FOR  
18 THE PAST THREE WEEKS I HAVE BEEN LIKE FIGURING OUT  
19 SOMETHING TO SAY OR WRITE SOMETHING THAT I COULD SAY THAT  
20 MIGHT BE IN MY FAVOR AS FAR AS MY SENTENCING GOES BUT I  
21 REALLY HAVEN'T COME UP WITH NOTHING BUT I WOULD LIKE TO  
22 SAY IN THE BEGINNING OF THIS TRIAL I HEARD A LOT OF  
23 NEGATIVE THINGS ABOUT YOU AND THE WAY YOU HANDLED THINGS  
24 WHICH I LATER COME TO FIND OUT IT WASN'T TRUE AND DUE TO  
25 PROCEEDINGS YOU HAVE BEEN A FAIR -- FAIR TO BOTH SIDES AND  
26 OTHER THAN THAT, YOU KNOW, I JUST SAY I -- YOU KNOW --  
27 STILL RETAIN THAT SAME FAIRNESS IN THE SENTENCING YOU  
28 IMPOSE ON ME TODAY.

00115

1 THAT'S ALL I HAVE TO SAY.

2 THE COURT: ALL RIGHT, MR. SEEGARS.

3 THE PROBLEM THAT I -- THAT I AM CONFRONTED  
4 WITH IN THIS CASE IS THAT I BELIEVE, MR. SEEGARS, YOU  
5 CANNOT CONTROL YOUR BEHAVIOR AND BECAUSE YOU CANNOT  
6 CONTROL YOUR BEHAVIOR I THINK YOU ARE A GREAT DANGER TO  
7 SOCIETY AND PERHAPS TO YOURSELF.

8 AND THAT TROUBLES ME A GREAT DEAL BECAUSE THE  
9 DIFFICULTY IS YOU OBVIOUSLY HAVE SOME INHERENT  
10 INTELLIGENCE.

11 YOU'VE RECEIVED 14 YEARS OF EDUCATION.

12 YOU'VE HAD SOME GOOD OPPORTUNITIES TO DO SOME  
13 THINGS FOR YOURSELF BUT YOU CONTINUE TO REPEAT THE KIND OF  
14 CONDUCT THAT HAS CONTINUALLY GOTTEN YOU INTO TROUBLE.

15 AND AS I LOOK BACK AT YOUR PREVIOUS  
16 CONVICTIONS FOR WHICH YOU WERE SENTENCED TO PRISON IT  
17 SEEMS TO ME THAT IT'S BASICALLY MORE OF THE SAME.

18 AND THAT TYPE OF CONDUCT IS DANGEROUS.

19 IT IS THREATENING TO SOCIETY AND PEOPLE  
20 WITHIN SOCIETY AND YOU'VE DEMONSTRATED, UNFORTUNATELY, AND  
21 SADLY, THAT YOU'RE NOT REALLY CAPABLE OF CIRCULATING IN A  
22 FREE SOCIETY WITHOUT CAUSING DANGER OR INJURY TO OTHER  
23 PEOPLE.

24 AND THE SENTENCE THAT I'M GOING TO IMPOSE IN  
25 THIS CASE, AND I'M SURE YOUR ATTORNEY HAS TOLD YOU WHAT  
26 I'M INCLINED TOO DO, IS BEING DONE WITH THAT IN MIND AND  
27 I -- I DO IT WITH A LOT OF REGRET IN A SENSE BECAUSE I  
28 DON'T LIKE TO TAKE A HUMAN BEING AND CONFINED THAT PERSON

1 FOR AS LONG AS I FEEL I HAVE TO CONFINED YOU IN ORDER TO  
2 PROTECT SOCIETY'S INTEREST IN THIS CASE.

3 ALL RIGHT. I'M GOING TO DENY PROBATION IN  
4 THIS CASE.

5 THE REASONS ARE THE DEFENDANT'S PRISON  
6 HISTORY, HIS CRIMES OF A CONTINUINGLY SERIOUS NATURE.

7 I FIND THAT MR. SEEGARS IS A DANGER TO  
8 SOCIETY AND THERE WAS A VULNERABLE VICTIM, TWO VULNERABLE  
9 VICTIMS. HE INFLICTED PAIN AND SUFFERING ON EACH OF THEM  
10 AND HIS INABILITY TO CONFORM HIS BEHAVIOR TO THE STANDARD  
11 REQUIRED BY A SOCIETY AND WHICH SOCIETY HAS A RIGHT TO  
12 REQUIRE.

13 ALL OF THOSE REASONS JUSTIFY A DENIAL OF  
14 PROBATION AND I DO DENY PROBATION ON THAT GROUND.

15 MOREOVER, THE COURT IS GOING TO ELECT TO  
16 IMPOSE CONSECUTIVE SENTENCES IN THIS CASE BECAUSE THE  
17 MULTIPLE VICTIMS, SEPARATE ACTS OF VIOLENCE, THE THREATS  
18 AGAINST EACH OF THE VICTIMS. THESE INCIDENTS OCCURRED IN  
19 DIFFERENT PLACES AND AT DIFFERENT TIMES.

20 THE CONVICTIONS WERE NUMEROUS AND THE  
21 DEFENDANT HAS ENGAGED IN A PATTERN OF VIOLENT CONDUCT.

22 I AM GOING TO ELECT TO SENTENCE THE DEFENDANT  
23 TO THE EXTENT THAT I'M GOING TO BE INDICATING IN A MOMENT  
24 PURSUANT TO PENAL CODE SECTION 667.6(C) BECAUSE OF THE  
25 DANGER TO THE PUBLIC IN WHICH -- AND WHICH REQUIRES THAT  
26 THE DEFENDANT BE CONFINED AND NOT BE PERMITTED TO BE FREE  
27 IN SOCIETY FOR A PERIOD OF TIME SUFFICIENT TO INSURE THAT  
28 HE IS NO LONGER A DANGER TO SOCIETY.

00117

1 MR. SEEGARS HAS NOT EXPRESSED ANY REMORSE IN  
2 THIS CASE BUT I THINK THERE IS REMORSE WITHIN HIM FOR WHAT  
3 HE HAS DONE BUT I THINK IN SPITE OF WHAT I PERCEIVE WITHIN  
4 MR. SEEGARS HE IS UNABLE TO CONFORM HIS BEHAVIOR TO THE  
5 STANDARD SOCIETY HAS A RIGHT TO EXPECT.

6 THEREFORE, IT IS THE JUDGMENT AND SENTENCE OF  
7 THIS COURT FOR A VIOLATION OF PENAL CODE SECTION 211 DASH  
8 212.5-B. AS ALLEGED AND CONTAINED WITHIN COUNT TWO OF THE  
9 INFORMATION THAT THE DEFENDANT BE SENTENCED TO PRISON FOR  
10 A PERIOD OF FIVE YEARS.

11 I AM PICKING THE AGGRAVATED TERM IN THIS CASE  
12 BASED UPON THE VICTIM'S VULNERABILITY, PREDATORY NATURE OF  
13 THE ATTACK ON THE VICTIM, THE DANGER THE DEFENDANT IS TO  
14 SOCIETY AND REPETITIVE NATURE OF HIS OFFENSES. THESE ARE  
15 THE SAME KINDS OF CONDUCT FOR WHICH HE WAS PREVIOUSLY  
16 CONVICTED AND SENTENCED TO PRISON. THEREFORE, I DO SELECT  
17 FIVE YEARS.

18 I FIND NO FACTORS IN MITIGATION IN CONNECTION  
19 WITH THIS OFFENSE.

20 I'M GOING TO -- FOR THE REASONS STATED --  
21 IMPOSE THE CONSECUTIVE SENTENCE AS TO COUNT 11.

22 I'M GOING TO FOR -- FOR A VIOLATION OF PENAL  
23 CODE SECTION 664 DASH 2612 ATTEMPTED RAPE, AS CONTAINED  
24 WITHIN COUNT 11, IMPOSE THE AGGRAVATED TERM OF FOUR YEARS.

25 I'M GOING TO STAY ALL BUT ONE-THIRD OF THE  
26 MIDTERM. THREE YEARS ARE STAYED. ONE YEAR CONSECUTIVE.  
27 THEREFORE, A TOTAL OF FOUR YEARS -- I'M SORRY -- A TOTAL  
28 OF SIX YEARS FOR COUNTS TWO AND 11.

00118

1 I'M GOING TO FIND COUNT THREE, VIOLATION OF  
2 SECTION 236/237 OF THE PENAL CODE, FALSE IMPRISONMENT  
3 FALSE WITHIN THE LIMITATIONS CONTAINED WITHIN PENAL CODE  
4 SECTION 654, AND I'M GOING TO STAY EXECUTION OF SENTENCE  
5 IN THAT MATTER IN VIEW OF THE SENTENCE AS TO COUNT TWO.

6 I'M GOING TO -- AS TO COUNT SEVEN, SENTENCE  
7 DEFENDANT UNDER 1170.1, SO FOR A VIOLATION OF PENAL CODE  
8 SECTION 288(A)(C) AS ALLEGED AND CONTAINED WITHIN COUNT 7,  
9 I'M GOING TO SENTENCE THE DEFENDANT TO THE AGGRAVATED TERM  
10 OF EIGHT YEARS.

11 I AM GOING TO MAKE THAT CONCURRENT WITH THE  
12 TIME CONTAINED WITHIN COUNTS TWO AND ELEVEN, CONCURRENT.

13 AS TO COUNT NINE, AGAIN, I'M GOING TO  
14 SENTENCE THE DEFENDANT -- STRIKE THAT.

15 AS TO COUNT TEN I'M GOING TO SENTENCE THE  
16 DEFENDANT PURSUANT TO 1170.1, TO THE AGGRAVATED TERM OF  
17 EIGHT YEARS FOR A VIOLATION OF SECTION 289-A. OF THE PENAL  
18 CODE. THAT WILL BE CONCURRENT WITH THE TIME IN COUNTS TWO  
19 AND ELEVEN PURSUANT TO 1170.1.

20 THE REASON I'M DOING THAT AS TO COUNTS SEVEN  
21 AND TEN, IS BECAUSE THOSE TWO COUNTS SEEM TO ME TO BE  
22 RELATED CLOSELY TRANSACTIONALLY TO OTHER COUNTS THAT I'M  
23 GOING TO IMPOSE AN AGGRAVATED TERM UNDER 667.6.

24 AND IN ADDITION TO THAT IT PERMITS THE COURT  
25 TO ARRIVE AT A TOTAL NUMBER OF YEARS THE COURT DEEMS TO BE  
26 APPROPRIATE IN THIS CASE.

27 PURSUANT TO PENAL CODE SECTION 667.6(C), IT  
28 IS THE JUDGMENT AND SENTENCE OF THIS COURT FOR A VIOLATION

1 OF PENAL CODE SECTION 288(A)(C) AS CONTAINED WITHIN COUNT  
2 FOUR THE DEFENDANT BE SENTENCED TO PRISON FOR A PERIOD OF  
3 EIGHT YEARS.

4 MOREOVER, THE DEFENDANT SHALL SERVE  
5 CONSECUTIVELY PURSUANT TO 667.6(C), AN ADDITIONAL THREE  
6 YEARS FOR A VIOLATION OF PENAL CODE SECTION 667.8(A),  
7 KIDNAPPING AS ALLEGED IN CONNECTION WITH COUNT FOUR.

8 CONSECUTIVE THERETO THE DEFENDANT SHALL SERVE  
9 EIGHT YEARS FOR A VIOLATION OF PENAL CODE SECTION  
10 288(A)(C). AS CONTAINED WITHIN COUNT FIVE, CONSECUTIVELY.

11 FOR A VIOLATION OF PENAL CODE SECTION  
12 288(A)(C). AS CONTAINED WITHIN COUNT SIX OF THE  
13 INFORMATION, DEFENDANT SHALL SERVE EIGHT YEARS  
14 CONSECUTIVELY.

15 FOR A VIOLATION OF PENAL CODE SECTION  
16 288(A)(C). AS CONTAINED WITHIN COUNT EIGHT DEFENDANT SHALL  
17 SERVE CONSECUTIVELY EIGHT YEARS.

18 FOR A VIOLATION OF PENAL CODE SECTION 289(A)  
19 AS CONTAINED WITHIN COUNT NINE THE DEFENDANT SHALL SERVE  
20 CONSECUTIVELY A PERIOD OF EIGHT YEARS IN THE STATE PRISON.

21 IN ADDITION THE DEFENDANT HAVING BEEN  
22 PREVIOUSLY CONVICTED OF A FELONY, TO WIT; ROBBERY AS  
23 ALLEGED AND FOUND TO BE TRUE WITHIN THE MEANING OF  
24 SECTIONS 667-1192.7 OF THE PENAL CODE THE DEFENDANT  
25 ORDERED TO SERVE ADDITIONAL FIVE YEARS CONSECUTIVE TO THE  
26 TERM SERVED.

27 THEREFORE, THE TOTALS ON THIS SENTENCE ARE AS  
28 FOLLOWS.

1 PURSUANT TO 1170.1 A TOTAL TERM OF SIX YEARS.  
2 PURSUANT TO PENAL CODE SECTION 667.6(C) A  
3 TOTAL TERM OF 43 YEARS.

4 FIVE YEARS FOR THE PRIOR. TOTAL OF 54 YEARS.  
5 IS THAT CORRECT?

6 THE PROBATION OFFICER: YOUR HONOR, I'M  
7 SORRY. I DIDN'T THINK ABOUT THIS EARLIER IN CHAMBERS. AS  
8 SOON AS YOU TOOK TWO EIGHT-YEAR TERMS AND PUT THEM UNDER  
9 170 THEY BECAME PRINCIPAL TERM UNDER 1170 AND EIGHT  
10 YEARS -- ACTUALLY NINE -- EIGHT PLUS FIVE CONCURRENT PLUS  
11 ONE CONSECUTIVE.

12 THE COURT: WHY DO THEY BECOME PRINCIPAL  
13 TERM?

14 PROBATION OFFICER: BECAUSE THEY COVER THE  
15 MOST --

16 THE COURT: I THINK RECENT CASE LAW ALTERS  
17 THAT PRINCIPLE.

18 THERE IS A VERY RECENT CASE OUT OF THE FIFTH  
19 DISTRICT THAT GIVES THE COURT THE DISCRETION TO SENTENCE  
20 IN THIS TYPE OF CASE, I BELIEVE, AND MAKE THE PRINCIPAL  
21 TERM THE LESSER OF THE OFFENSES.

22 THE PROBATION OFFICER: VERY GOOD.

23 THE COURT: THAT'S MY INTERPRETATION OF THE  
24 LAW AND IT -- IT BASICALLY HOLDS THAT PEOPLE VERSUS  
25 HIMMELSBACH, I BELIEVE IS THE THIRD DISTRICT CASE, IS NOT  
26 NECESSARILY ACCURATE ON THESE FACTS.

27 IN ANY EVENT THAT'S GOING TO BE THE JUDGMENT  
28 AND SENTENCE OF THE COURT.

**EXHIBIT F**





## ABSTRACT OF JUDGMENT - COMMITMENT

E 16635

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

santa clara

COURT I.D.

43

BRANCH levi bldg.

PEOPLE OF THE STATE OF CALIFORNIA  
DEFENDANT: JAMES CHARLES SEE GARS

VERSUS

☒ PRESENTCASE NUMBER(S)  
129348

- A

- B

- C

- D

- E

AKA: Jamie Charles Seegars

☐ NOT PRESENT

COMMITMENT TO STATE PRISON

ABSTRACT OF JUDGMENT

☐ AMENDED  
ABSTRACTDATE OF HEARING  
(MO) (DAY) (YR)  
05/03/89

DEPT. NO.

9

JUDGE

JACK KOMAR

CLERK

J. BALLAH

PORTER

COUNSEL FOR PEOPLE

COUNSEL FOR DEFENDANT

PROBATION NO. OR PROBATION OFFICER

H. GORLEY

R. TITUS

Y. TREVINO

J. GRUBBS

DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

☐ ADDITIONAL COUNTS ARE LISTED ON  
ATTACHMENT

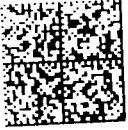
COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY	SENTENCE RELATION								PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
					MO	DAY	YEAR		TERM (L.M.U.)	CONCURRENT	CONSECUTIVE	CONSECUTIVE	CONSECUTIVE	CONSECUTIVE	CONSECUTIVE	CONSECUTIVE	YEARS	MONTHS
2	Pc	211/212.5(b)	Robbery 2nd deg.	88	04	05	89	X	U								5	00
1	Pc	264/261(2)	Attempt Rape	88	04	05	89	X	U	X							1	00
3	PC	236/237	False Imprisonment	88	04	05	89	X								X	0	00
2	Pc	288a(c)	Oral copulation	88	04	05	89	X	M	X							(6	00)
10	PC	288a(c)	Oral Copulation	88	04	05	89	X	M	X							(6	00)

ENHANCEMENTS (CHARGED AND FOUND, STRICKEN, TIME IMPOSED):

UNIT	12022(a)			12022(b)			12022.3(a)			12022.3(b)			12022.5			12022.6(a)			12022.6(b)			12022.7			12022.8			667.8(a)		
	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I	C/F	S	I
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Mr. James Seegars- E-16635  
630 - 1-296  
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Avenal, Ca 93204

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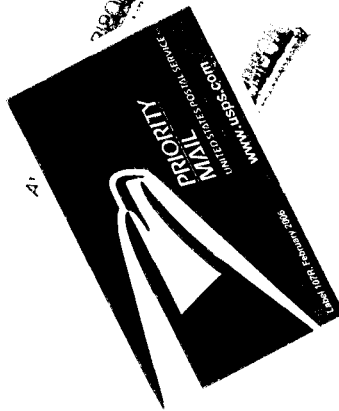


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Northern District of California  
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